

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CARL J. MOORE,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 616

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged open burning violation; having come on regularly for hearing before the Pollution Control Hearings Board on the 21st day of October, 1974, at Spokane, Washington; and appellant, Carl J. Moore, appearing pro se and respondent, Spokane County Air Pollution Control Authority, appearing through James P. Emacio, deputy prosecuting attorney; and Board member present at the hearing being Walt Woodward; and the Board having read the transcript, exhibits, records and files herein and arguments presented and having entered on the 22nd day of November, 1974, its proposed

1 Findings of Fact, Conclusions of Law and Order, and the Board having
2 served said proposed Findings, Conclusions and Order upon all parties
3 herein by certified mail, return receipt requested and twenty days
4 having elapsed from said service; and

5 The Board having received exceptions to said proposed Findings,
6 Conclusions and Order from respondent, and having considered same and
7 denied respondent's exceptions; and the Board being fully advised in
8 the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions and Order, dated the 22nd day of November,
11 1974, and incorporated by this reference herein and attached hereto as
12 Exhibit A, are adopted and hereby entered as the Board's Final Findings
13 of Fact, Conclusions and Order herein.

14 DATED this 15th day of January, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

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17 Chris Smith
18 CHRIS SMITH, Chairman

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20 Walt Woodward
21 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,
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This matter, the appeal of a \$50.00 civil penalty for an alleged open burning violation, originally came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) in Spokane on September 11, 1974. Appellant was not present. Respondent was represented by its director, Fred Shiosaki, who moved for a continuance on the grounds that respondent had not received the Board's notice of hearing. The Board took the motion under advisement and heard respondent's testimony. Subsequently, the Board granted the motion and declared the September 11, 1974 testimony null and void.

EXHIBIT A

1 This matter again came before the Board (Walt Woodward, presiding
2 officer) in the Spokane facility of the State Department of Labor and
3 Industries on October 21, 1974.

4 Appellant appeared pro se and respondent through James P. Emacio,
5 deputy prosecuting attorney. Gale Parrish, Spokane court reporter,
6 recorded the proceedings.

7 Witnesses were sworn and testified. Exhibits were admitted.
8 Arguments were made.

9 From testimony and arguments presented, exhibits examined and
10 transcript reviewed, the Pollution Control Hearings Board makes these

11 FINDINGS OF FACT

12 I.

13 Respondent, pursuant to Section 5, chapter 69, Laws of 1974,
14 3rd Ex. Sess., has filed with this Board a certified copy of its
15 Regulation I containing respondent's regulations and amendments thereto.

16 II.

17 Section 6.01(5)(b) of respondent's Regulation I permits the open
18 burning only of "dry garden trimmings, tree clippings, lawn rakings,
19 dry leaves and needles" in certain areas only during periods designated
20 by public notice of respondent.

21 III.

22 Respondent last winter issued a memorandum to the construction
23 industry permitting small "warming" fires of clean, dry wood. Regulation
24 I contains no mention of "warming" fires.

25 IV.

26 Appellant is a general contractor. On April 27, 1974, he, in the

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 company of his 17-year-old son, was completing the construction of a
2 house at East 23614 Sprague, Spokane, Spokane County. The location was
3 within the area of permissive household garden waste burning and
4 April 27, 1974 was a day designated by respondent as approved for that
5 type of open burning.

6 V.

7 The day began with warm temperature but turned colder with rain
8 and then hail falling to a depth of one-half inch on the ground. To
9 keep warm, appellant and his son built and ignited two fires, each
10 about two feet in diameter composed of cedar shingles and dry board
11 ends. The amount of waste lumber involved in the fires was a small
12 amount of the total waste lumber from the house construction. Appellant
13 testified it was his practice to have the waste lumber from a
14 construction project hauled away; this was done about a month after the
15 instant matter for the house being built at East 23614 Sprague.

16 VI.

17 In response to complaints received by respondent, an inspector
18 on respondent's staff visited the instant site on April 27, 1974 and
19 saw the two fires described above. He issued to appellant a field
20 notice of violation and, subsequently, respondent served appellant with
21 a notice of violation of Section 6.01 of Regulation I and imposed a
22 \$50.00 civil penalty, which is the subject of this appeal.

23 VII.

24 Appellant and respondent's inspector engaged in a discussion on
25 April 27, 1974. Appellant, irked at what he felt was an unjust citation
26 in view of a large slash fire nearby, did not mention to respondent's

27 FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

1 inspector that the two fires were built solely for the purpose of warmth.

2 VIII.

3 Any Conclusion of Law hereinafter cited which is deemed to be a
4 Finding of Fact is adopted herewith as same.

5 From these Findings, the Pollution Control Hearings Board comes
6 to these

7 CONCLUSIONS OF LAW

8 I.

9 The Board believes appellant built the fires in question for the
10 purpose of personal warmth on a chilly day and not for the purpose of
11 disposing, by illegal means, of wood waste.

12 II.

3 Appellant was in technical violation of Section 6.01 of respondent's
14 Regulation I as cited in the notice of violation described in Finding
15 of Fact VI, but respondent's memorandum to contractors, permitting small
16 "warming" fires in cold weather, appears to negate that technical
17 violation.

18 III.

19 Any Finding of Fact herein stated which is deemed to be a Conclusion
20 of Law is adopted herewith as same.

21 Therefore, the Pollution Control Hearings Board issues this

22 ORDER

23 The appeal is sustained and the instant civil penalty of \$50.00
24 is cancelled.

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 DONE at Lacey, Washington this 22nd day of 11, 1974.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward

4 WALT WOODWARD, Chairman

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6 W. A. GISSBERG, Member

7 Chris Smith

8 CHRIS SMITH, Member

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27 FINDINGS OF FACT,
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